



COMMONWEALTH OF MASSACHUSETTS

ADMINISTRATIVE BULLETIN

Executive Office for Administration and Finance

Office of the Commissioner

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75-14

TO: ALL AGENCY HEADS

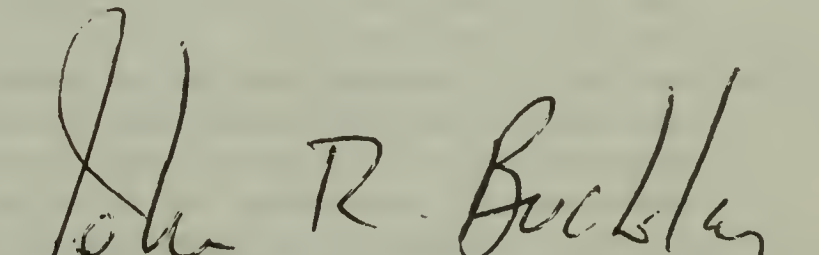
RE: AFFIRMATIVE ACTION CONTRACTS - EQUAL EMPLOYMENT OPPORTUNITY,
ANTI-DISCRIMINATION AND AFFIRMATIVE ACTION PROGRAM

This bulletin rescinds Administrative Bulletin 75-7 issued July 14, 1975.

Attached hereto is a copy of the Commonwealth's Equal Employment Opportunity/Anti-Discrimination and Affirmative Action Plan, which is to be included as an addendum to all future state or state assisted construction contracts. It is now our policy to include this language in all such contracts, inserting in each contract the minimum percentages required for each locality, which are set out in the accompanying Table.

Note that these are required minimum, rather than maximum, percentages for minority participation on state and state assisted contracts.

Questions concerning this bulletin should be directed to the Director, Public Employment Division, Massachusetts Commission Against Discrimination, Attention: Mr. Roger C. MacLeod, 727-7310.


John R. Buckley
Commissioner of Administration

Attach.

THE COMMONWEALTH OF MASSACHUSETTS

SUPPLEMENTAL EQUAL EMPLOYMENT OPPORTUNITY
ANTI-DISCRIMINATION AND AFFIRMATIVE ACTION PROGRAM

- I. For purposes of this contract, "minority" refers to Asian-Americans, Blacks, Spanish Surnamed Americans, North American Indians, and Cape Verdeans. "Commission" refers to the Massachusetts Commission Against Discrimination.
- II. During the performance of this contract, the Contractor and all of (his) Subcontractors (hereinafter collectively referred to as the Contractor), for himself, his assignees, and successors in interest, agree as follows:
1. In connection with the performance of work under this contract, the Contractor shall not discriminate against any employee or applicant for employment because of race, color, religious creed, national origin, age or sex. The aforesaid provision shall include, but not be limited to, the following: employment upgrading, demotion, or transfer; recruitment advertising; recruitment layoff; termination; rates of pay or other forms of compensation; conditions or privileges of employment; and selection for apprenticeship. The Contractor shall post hereafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the Commission setting forth the provisions of the Fair Employment Practices Law of the Commonwealth (M.G.L. Chapter 151B).
 2. In connection with the performance of work under this contract, the Contractor, shall undertake in good faith affirmative action measures designed to eliminate any discriminatory barriers in the terms and conditions of employment on the grounds of race, color, religious creed, national origin, age or sex, and to eliminate and remedy any effects of such discrimination in the past. Such affirmative action shall entail positive and aggressive measures to ensure equal opportunity in the areas of hiring, upgrading, demotion or transfer, recruitment, layoff or termination, rate of compensation, and in-service or apprenticeship training programs. This affirmative action shall include all action required to guarantee equal employment opportunity for all persons, regardless of race, color, religious creed, national origin, age, or sex. A purpose of this provision is to ensure to the fullest extent possible an adequate supply of skilled tradesmen for this and future Commonwealth public construction projects.
- III. 1. As part of his obligation of remedial action under the foregoing section, the Contractor shall maintain on this project a not less than _____ percent ratio of minority employee man hours to total man hours in each job category including but not limited to bricklayers, carpenters, cement masons, electricians, ironworkers, operating engineers, and those "classes of work" enumerated in Section 44C of Chapter 149 of the Massachusetts General Laws.

2. In the hiring of minority journeymen, apprentices, trainees and advanced trainees, the Contractor shall rely on referrals from a multi-employer affirmative action program approved by the Commission, traditional referral methods utilized by the construction industry, and referrals from agencies, not more than three in number at any one time, designated by the Liaison Committee or the Commission.

IV.

1. At the discretion of the Commission there may be established for the life of this contract a body to be known as the Liaison Committee. The Liaison Committee shall be composed of one representative each from the agency or agencies administering this project, hereinafter called the administering agency, the Commission and such other representatives as may be designated by the Commission in conjunction with the administering agency.
2. The Contractor (or his agent, if any, designated by him as the on-site equal employment opportunity officer) shall recognize the Liaison Committee as an affirmative action body, and shall establish a continuing working relationship with the Liaison Committee, consulting with the Liaison Committee on all matters related to minority recruitment, referral, employment and training.
3. The Contractor shall prepare projected manning tables on a quarterly basis. These shall be broken down into projections, by week, or workers required in each trade. Copies shall be furnished one week in advance of the commencement of the period covered, and also when updated, to the Commission and Liaison Committee.
4. Records of employment referral orders, prepared by the Contractor, shall be made available to the Commission and to the Liaison Committee on request.
5. The Contractor shall prepare weekly reports in a form approved by the Commission of hours worked in each trade by each employee, identified as minority or non-minority. Copies of these shall be provided at the end of each such week to the Commission and to the Liaison Committee.

V.

If the Contractor shall use any subcontractor on any work performed under this contract, he shall take affirmative action to negotiate with qualified minority subcontractors. This affirmative action shall cover both pre-bid and post-bid periods. It shall include notification to the Office of Minority Business Assistance (within the Executive Office of Communities and Development) or its designee, while bids are in preparation, of all products, work or services for which the Contractor intends to negotiate bids.

VI.

In the employment of journeymen, apprentices, trainees and advanced trainees, the Contractor shall give preference, first, to citizens of the Commonwealth who have served in the armed forces of the United States in time of war and have been honorably discharged therefrom or released from active duty therein, and who are qualified to perform the work to which the employment relates, and, secondly, to citizens of the Commonwealth generally, and, if such cannot be obtained in sufficient numbers, then to citizens of the United States.

VII. A designee of the Commission and a designee of the Liaison Committee shall each have right of access to the construction site.

VIII. Compliance with Requirements

The Contractor shall comply with the provisions of Executive Order No. 74, as amended by Executive Order No. 116 dated May 1, 1975, and of Chapter 151B as amended, of the Massachusetts General Laws, both of which are herein incorporated by reference and made a part of this contract.

IX. Non-Discrimination

The Contractor, in the performance of all work after award, and prior to completion of the contract work, will not discriminate on grounds of race, color, religious creed, national origin, age or sex in employment practices, in the selection or retention of subcontractors, or in the procurement of materials and rentals of equipment.

X. Solicitations for Sub-Contracts, and for the Procurement of Materials and Equipment

In all solicitations either by competitive bidding or negotiation made by the Contractor either for work to be performed under a subcontract or for the procurement of materials or equipment, each potential subcontractor or supplier shall be notified in writing by the Contractor of the Contractor's obligations under this contract relative to non-discrimination and affirmative action.

XI. Bidders Certification Requirement

1. The bidders certification form currently in use will be deleted from all future bid documents.
2. The following certification statement will be inserted in the bid document just above the bidder's signature, as a substitute for the present bidder certification form:

"The bidder hereby certifies he shall comply with the minority manpower ratio and specific action steps contained in the appendix EEO attached hereto, including compliance with the minority contractor compliance specified in Section V of said appendix. The contractor receiving the award of the contract shall be required to obtain from each of its subcontractors and submit to the contracting or administering agency prior to the performance of any work under said contract a certification by said subcontractor, regardless of tier, that it will comply with the minority manpower ratio and specific affirmative action steps contained in the appendix EEO."

XII. Contractor's Certification

The Contractor's certification form must be signed by all successful low bidder(s) prior to award by the contracting agency. (See attachment).

XIII. Compliance-Information, Reports and Sanctions

1. The Contractor will provide all information and reports required by the administering agency or the Commission on instructions issued by either of them and will permit access to its facilities and any books, records, accounts and other sources of information which may be determined by the Commission to affect the employment of personnel. This provision shall apply only to information pertinent to the Commonwealth's supplementary affirmative action contract requirements. Where information required is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the administering agency or the Commission as appropriate and shall set forth what efforts he has made to obtain the information.
2. Whenever the administering agency, the Commission, or the Liaison Committee believes the General Contractor or any Subcontractor may not be operating in compliance with the terms of this Section, the Commission directly, or through its designated agent, shall conduct an appropriate investigation, and may confer with the parties, to determine if such Contractor is operating in compliance with the terms of this Section. If the Commission or its agent finds the General Contractor or any Subcontractor not in compliance, it shall make a preliminary report on non-compliance, and notify such Contractor in writing of such steps as will in the judgment of the Commission or its agent bring such Contractor into compliance. In the event that such Contractor fails or refuses to fully perform such steps, the Commission shall make a final report of non-compliance, and recommend to the administering agency the imposition of one or more of the sanctions listed below. If, however, the Commission believes the General Contractor or any Subcontractor has taken or is taking every possible measure to achieve compliance, it shall not make a final report of non-compliance. Within fourteen days of the receipt of the recommendations of the Commission, the administering agency shall move to impose one or more of the following sanctions, as it may deem appropriate to attain full and effective enforcement:
 - a. The recovery by the administering agency from the General Contractor of 1/100 of 1% of the contract award price or \$1000 whichever sum is greater, in the nature of liquidated damages or, if a Subcontractor is in non-compliance, the recovery by the administering agency from the General Contractor, to be assessed by the General Contractor as a back charge against the Subcontractor, of 1/10 of 1% of the sub-contract price, or \$400 whichever sum is greater, in the nature of liquidated damages, for each week that such party fails or refuses to comply;

- b. The suspension of any payment or part thereof due under the contract until such time as the General Contractor or any Subcontractor is able to demonstrate his compliance with the terms of the contract;
 - c. The termination, or cancellation, of the contract, in whole or in part, unless the General Contractor or any Subcontractor is able to demonstrate within a specified time his compliance with the terms of the contract;
 - d. The denial to the General Contractor or any Subcontractor of the right to participate in any future contracts awarded by the administering agency for a period of up to three years.
3. If at any time after the imposition of one or more of the above sanctions a Contractor is able to demonstrate that he is in compliance with this Section, he may request the administering agency, in consultation with the Commission, to suspend the sanctions conditionally, pending a final determination by the Commission as to whether the Contractor is in compliance. Upon final determination of the Commission, the administering agency, based on the recommendation of the Commission, shall either lift the sanctions or reimpose them.
4. Sanctions enumerated under Sections XI-2 shall not be imposed by the administering agency except after an adjudicatory proceeding, as that term is used M.G.L. c. 30A, has been conducted. No investigation by the Commission or its agent shall be initiated without prior notice to the Contractor.

XIV. Severability

The provisions of this section are severable, and if any of these provisions shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions.

A. Contractors' Certification

A contractor will not be eligible for award of a contract unless such contractor has submitted the following certification, which is deemed a part of the resulting contract:

CONTRACTOR'S CERTIFICATION

_____ certifies that:

Contractor

1. it tends to use the following listed construction trades in the work under the contract

_____ ; and
2. will comply with the minority manpower ratio and specific affirmative action steps contained herein; and
3. will obtain from each of its subcontractors and submit to the contracting or administering agency prior to the award of any subcontract under this contract the subcontractor certification required by these bid conditions.

(Signature of authorized representative of contractor)

B. Subcontractors' Certification

Prior to the award of any subcontract, regardless of tier, the prospective subcontractor must execute and submit to the Prime Contractor the following certification, which will be deemed a part of the resulting subcontract:

SUBCONTRACTORS' CERTIFICATION

_____ certifies that:

Subcontractor

1. it tends to use the following listed construction trades in the work under the subcontract

_____ ; and
2. will comply with the minority manpower ratio and specific affirmative action steps contained herein; and
3. will obtain from each of the subcontractors prior to the award of any subcontract under this subcontract the subcontractor certification required by these bid conditions.

(Signature of authorized representative of subcontractor)

In order to ensure that the said subcontractors' certification becomes a part of all subcontracts under the prime contract, no subcontract shall be executed until an authorized representative of the state agency (or agencies) administering this project has determined, in writing, that the said certification has been incorporated in such subcontract, regardless of tier. Any subcontract executed without such written approval shall be void.

MINIMUM MINORITY PERCENTAGES TO BE APPLIED TO
STATE AND STATE ASSISTED CONTRACTS
WITHIN THE COMMONWEALTH OF MASSACHUSETTS

The following percentages shall apply:

	<u>No Less Than</u>
Boston: Impact Area (Jamaica Plain (part), Mattapan, South Cove, Chinatown, Bay Village, Roxbury, Dorchester, South End)	30%
Others	10%
Cambridge	12%
New Bedford	18%
Springfield	10%
All other cities and towns	5%

